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Interest groups and EU anti-dumping policy

Dirk De Bièvre and Jappe Eckhardt

ABSTRACT Why did the European Union (EU) attempt yet fail to reform its anti-dumping legislation between 2006 and 2008? We analyse this attempt to reform a legislative act regulating interest groups' access to public decision-makers by relying on collective action and principal–agent theory. Contrary to approaches assuming that the European Commission enjoys a large degree of agent autonomy to implement a more liberal EU trade policy than most member state principals would want, we conceive of principals and their agents as actors responding to the relative balance between interest groups mobilizing for and against reform. Tracing interest group collective action advantages back to industry consolidation and the certainty of future losses, we argue that concentrated producer groups mobilize most intensively and persistently and successfully influence policy outcomes. On the losing side, importers and retailers, joined by producers having outsourced parts of their production, let alone consumers, fail to counter this mobilization effort.

KEY WORDS Anti-dumping; collective action; EU; interest groups; trade policy.

INTRODUCTION

In 2006, the European Commission engaged in a reform initiative of the European Union's anti-dumping policy in response to a years-long simmering debate. The pros and cons of the way in which the EU conducts its anti-dumping policy – one of the most economically salient and established policy domains under the aegis of the European Commission – had become subject of ever more heated controversy owing to the Commission's handling of several anti-dumping cases between 2000 and 2005.¹ However, after more than two years of intense consultations, lobbying coming from diverging societal interests, and heated controversy within Brussels-based institutions, the European Union (EU) shelved the proposal in January 2008. The aim of the reform was to redefine the mandate of the specialized administrative unit within the European Commission, the Directorate of Trade Defence, endowed with the task of processing individual anti-dumping complaints from European producers. The reform would have given more rights to those hurt by the imposition of import duties on allegedly dumped imports. Among those suffering losses from anti-dumping measures are importers,

downstream users and retailers. The reform failed and ended in the legislative status quo.

In this contribution, we adopt a primarily society-centred perspective on trade policy-making and provide an answer for why the reform of EU anti-dumping policy failed. We counter explanations based on the assumption that the European Commission agent enjoys a high degree of autonomy *vis-à-vis* member state principals to implement a more liberal trade policy than principals would want. We also counter explanations based on the alleged dominance of liberal voices among interest groups. In our view, interest groups' preferences diverge from opposition to support for liberalizing reform, confronting both the European Commission agent and member state principals with conflicting demands on whether and how to reform anti-dumping policy. Our main proposition is that a high level of industry consolidation – a low number of firms or a domination by a set of very large firms – and the certainty of losses facilitate collective action and determine whether interest groups mobilize intensely by persistently pointing out the losses they would face. We further assume that policy-makers try to satisfy the demands of those groups mobilizing most. If our expectations about industry consolidation and affectedness as well as about the responsiveness of political authorities hold, we expect to find empirically that the most mobilized groups are most able to influence policy outcomes.

Hence, in our view, the outcome of the reform initiative can be explained by tracing interest groups' ability to mobilize to their degree of consolidation as well as their degree of certainty about future losses, high level of which lead to high mobilization capacity to which public authorities are likely to respond. These theoretical propositions lead to the following empirical implications about EU anti-dumping reform. Of all groups vying for the ear of public authorities, import-competing producers can be expected to prefer the status quo. Among them, those in consolidated sectors facing the certainty of losses are most able to mobilize and are able to persistently lobby both the Commission agent and EU member state principals. Groups favouring reform, consisting of importers, retailers and those producers having outsourced parts of their production fail to mobilize sufficiently because they face diffuse costs and uncertain future gains. In contrast to certain and concentrated costs in individual anti-dumping cases where they are hurt by import duties, in the event of a possible future reform importers and retailers face the difficult task of assessing the future benefits of such reform and have less clear incentives to mobilize. This is so despite their recently increased level of sector consolidation and the fact that outsourcing producers have joined their ranks. As the coalition of producers opposed to reform manages to mobilize more effectively in the European Union as a whole, as well as in a set of key producer-dominated national economies, they are able to influence the policy outcome, as public authorities in the end decide to maintain the legislative status quo.

We thus not only seek to contribute to the trade policy literature, but also contribute to the literature on interest groups in two ways. First, we show how Mancur Olson's (1965) theory of collective action has enduring usefulness

to analyse interest groups' influence over policy outcomes in that exercising influence requires firms to engage in intensive and persistent mobilization, not only in a one-time act of founding a trade association. Second, we draw attention to those legislative acts that organize which type of interests get the best type of day-to-day access to public decision-makers. Such acts have tremendous implications for the institutional environment in which many trade associations, law firms and consultancies operate in Brussels, especially in policy fields dominated by concentrated firm interests, such as trade policy (trade defence and international dispute settlement), competition policy (Directorate General [DG] Competition), and intellectual property (the European Patent Office). If we are right, research on interest groups should focus both on legislative and administrative policy-making in the EU.

We structure our contribution as follows. First, we show that the existing literature has severe difficulties explaining non-liberalization policy outcomes like the failed reform initiative of the anti-dumping policy. Second, we provide a short primer on current EU anti-dumping rules. Third, we present our conceptualization of principal-agent relationships with respect to trade defence, and introduce our main hypothesis. Fourth, we provide an empirical analysis of the origin and the evolution of the reform process from 2006 up to its suspension in 2008. We conclude with observations on the mobilization of concentrated interests, status quo politics and the nature of European trade policy.

WHAT DOES THE EXISTING LITERATURE SAY?

The non-liberalization status quo result of the anti-dumping reform initiative runs counter to a range of plausible explanations present in the existing literature on EU trade policy. Two types of explanations stand out: state-centred and society-centred (Oatley 2010).

First, many authors argue or assume that elected politicians deliberately delegate trade policy to the executive in order to isolate themselves from protectionist pressures in order to achieve welfare-enhancing policies through trade policy liberalization (Destler 1992; Meunier 2005). For the EU, this approach assumes that the European Commission generally holds more *liberal* preferences, while member states would have more *protectionist* preferences (e.g., Meunier 2005). Such approaches thus assign preferences to the agent *a priori*, assuming that the executive is more receptive to liberal ideas – a notion based on the assumption that interest groups lobby politicians more than executives – and that protectionist interests lobby more than free-trade-oriented ones. Principals like the EU Council of Ministers would thus endow an agent like the European Commission with a large degree of autonomy, leading to their isolation from societal pressures. The longer the chain of delegation, the more likely the agent would be to act upon his/her own autonomous preferences and go against some societal actors' preferences – a condition that seems to be fulfilled in the EU as European trade policy has been delegated from national parliaments to national executives and then in turn to the European

Commission. The autonomy of the agent may be even increased further with the presence of multiple principals having diverging preferences (Dür and Elsig 2011). Furthermore, an increase in economic heterogeneity among principals may lead to even more autonomy on the part of the agent.

A second strand of literature does take societal interests into account, but argues that groups demanding trade protection may have become less important in recent years. A first reason why demand for protectionism should have gone down is what could be called sectoral attrition: as economic sectors competing with imports are increasingly exposed to international competition, they might gradually decline or disappear (Haggard 1995; Hanson 1998). In a similar vein, there could also be a positive feedback effect of trade liberalization (Hathaway 1998): as firms restructure and adapt to the new liberalized environment by focusing on new foreign export opportunities, they change their political orientation on trade from seeking protection to advocating liberalization (Young 2007). Either way, it is expected that protectionist interests get weaker throughout the trade policy process. A second society-centred explanation for liberalizing policy is the argument that an increase in trade should lead to a larger participation of sectors involved in trading, i.e., both exporters and importers, in the policy process. As Destler and Odell (1987) have shown for the US case, importers have become more vocal in American trade politics as trade increased. In recent years, the weight of the importer and retail sector in the EU in overall Gross Domestic Product (GDP) has equally grown (Gereffi 1999). A common argument has also been that more internationalized firms and sectors become more in favour of market-opening (Milner 1988), although once multinational firms have established themselves inside a market, they may no longer have an interest in further liberalization. Finally, the internationalization of the economy has given rise to international supply chains, transforming production processes and in turn changing the preferences of societal interests on trade policy. Many firms have engaged in the outsourcing of their labour-intensive production and shifted production to high-end products that no longer compete directly with imports from low-cost producers (Underhill 1998). Consequently, traditional import-competing producers are increasingly confronted with a divergence of interests between them, as manufacturers producing only within the EU support protection, while out-sourcers favour freer EU market access, reinforcing the ranks of those advocating liberalization.

In short, this group of authors taking a society-centred perspective on trade policy formation argues that more internationalization of the economy should lead to more political pressure to liberalize trade policy. Both state-centred and society-centred analyses of the political economy of trade thus provide reasons for why trade policy in general, and European trade policy in particular, should have become more liberal. Yet, the Commission's 2006 anti-dumping reform initiative ran into difficulties and was aborted early 2008, leading to the maintenance of the legislative status quo in favour of

import-competing sectors and at the detriment of consumers, importers and retailers.

CURRENT EU ANTI-DUMPING RULES: A SHORT PRIMER

In going through the different stages of the anti-dumping decision-making process, we pay attention to the relative weight decision rules accord to different societal groups. As said, the declared intent of the reform initiative was to give more rights to those hurt by the imposition of import duties on allegedly dumped imports (Commission of the European Communities 2006). The European Commission invited all interested parties, i.e., member states, business, non-governmental organizations (NGOs) and individuals, to comment on the present system of trade defence instruments, and suggested a number of measures that gave more weight to importers and retailers in the decision-making procedures leading to the imposition of anti-dumping measures.

An anti-dumping case in the EU goes through a multi-step process. First, a complainant firm or interest association initiates an anti-dumping case on behalf of a section of the producers of a particular product. If a quarter of the EU producers of a particular product allege that foreign producers are dumping (i.e., selling below production cost or using price discrimination) products on the EU market, the Directorate for Trade Defence is obliged to investigate their request.² Hence, a section of producers themselves define the product and thus the size of the industry on behalf of which they file a complaint by providing a list of all known Community producers of the so-called 'like' product. Furthermore, firms that both produce and import the product in question – outsourcing firms – may be (and are usually) excluded when defining that 25 per cent proportion of Community industry, making the threshold for standing of a complainant relatively low. In a second step, the Commission informs the member state anti-dumping advisory committee about the case and launches a formal investigation of the foreign firms accused of dumping.

During the third stage of the procedure, the Commission establishes dumping, the level of injury to domestic European firms, whether dumping was the cause of injury to the industry, and whether the imposition of anti-dumping duties would be in the 'Community interest'. The latter means that the Commission is obliged to take into account the interests of four groups in its assessment of the impact of a potential anti-dumping action: (1) the complaining domestic producers; (2) the retailers and their associations; (3) the import users and their representative associations; and (4) consumer organizations (Vermulst and Waer 1996). However, the Community interest test is hardly ever used to reject anti-dumping measures (Sapir 2006; Wellhausen 2001). In many cases, once dumping and injury are proven and measures are expected to give relief to the complainant industry, it is presumed almost automatically that these measures are in 'the Community interest'.

During the fourth stage, the Commission again consults the Council's anti-dumping advisory committee and decides whether to impose provisional duties, which are imposed for six months (with the possibility of a three-month extension). The EU regulation stipulates that anti-dumping duties can only be imposed if at least 50 per cent of the EU producers of this product support the complaint. One month before the expiry of these provisional duties, the Commission is obliged to issue a proposal for definitive anti-dumping measures to the Council of Ministers. In other words, the Commission does not need the support of the member states to start raising duties.

Finally, the Commission puts a proposal on definitive duties to a mere simple majority vote in the Council, with abstentions counted in favour.³

INTEREST GROUP MOBILIZATION AND PUBLIC AUTHORITIES' RESPONSE

Principal-agent relationships in EU trade policy

Principal-agent approaches provide a functional explanation to delegation in EU policy-making, where principals delegate to an agent mainly to reduce transaction costs (Pollack 1997a, 1997b). By contrast, our conceptualization builds on the idea that in trade policy public authorities use delegation to deal with the task of simultaneously satisfying the competing demands of export-oriented sectors interested in foreign market access and of import-competing sectors with an interest in protection from foreign competition. As argued by De Bièvre and Dür (2005), public authorities delegate the negotiation of foreign market access for export-oriented sectors to one agent, while endowing another agent, like the Directorate for Trade Defence, with powers to provide protection for import-competing sectors. This institutional set-up allows principals to combine a high degree of delegation to both agents, while exercising tight control over them in order to maintain the flow of resources from lobbying. The European Commission agent acts as the exclusive agenda-setter tabling proposals in close co-ordination with the member state principals. Within this institutional set-up, principals exert control over their agent by institutionalizing the way interest groups access decision-makers to trigger fire alarm procedures, alerting both agents and principals to the fact that high concentrated costs are being imposed upon them (McCubbins and Schwartz 1984). It is plausible to treat public authorities as responsive to such signals from important constituencies, since these can mobilize and threaten their re-appointment (in case of the agent) or re-election (in case of the principals). We thus assume that public policy-makers, both principals or agents, do not have a specific trade policy preference of their own, independent of constituency demands (De Bièvre and Dür 2005), and expect those interest groups that are best able to overcome their collective action problems to yield influence over policy outcomes.

While we develop below the empirically observable implications of this reasoning as applied to anti-dumping policy and its reform, our approach stands in contrast to expectations that the agent, *in casu* the European Commission, would possess a degree of autonomy from domestic constituents that is larger than the autonomy the principals, i.e., the member states, dispose of. Hence, we consider it unlikely that the agent can successfully construct coalitions among different interest group constituents, or engage in playing out multiple principals with diverging preferences against each other in order to pursue preferences of its own – possibly liberalizing more than most principals would want.

The argument

On the basis of this conceptualization, we have two theoretical expectations about interest groups' ability to mobilize politically and one on public authorities' response. First, highly consolidated sectors overcome collective action problems more easily and mobilize more successfully than fragmented sectors. In other words, firms active in product markets with a relatively low number of firms or with a small group of very large firms are expected to mobilize more intensively than a high number of small firms in other sectors. Second, a high degree of certainty about losses makes groups more likely to mobilize; that is, the incentive for firms to engage in political activity is motivated primarily by the belief that if they abstain from such activity public policy would impose burdens on them. With respect to the responsiveness of public authorities, we expect both agents and principals to try to satisfy the demands of the most intensely mobilized groups. In other words, the relative balance of interest groups' mobilization should determine the policy outcome.

Concentrated producer interests, industry consolidation and certainty of losses

Trade policy – the imposition of trade barriers or the creation of market access – produces concentrated costs and benefits for producers and diffuse costs and benefits for all other groups in society. Sectors of producers are most likely to mobilize in favour of or against such measures. Because of free riding problems, however, not all producers get mobilized to the same extent. Producers in consolidated or 'oligopolistic' sectors, i.e., consisting of a low numbers of firms, are more likely to get organized. Mostly, these firms rely on large economies of scale, as in manufacturing sectors active in commodity markets like steel, chemicals or metals, and in consumer electronics. They face less severe collective action problems because they need to co-ordinate their actions with fewer other actors, and because a set of dominant firms within the sector may have disproportionate incentives to assume the costs of mobilizing (Olson 1965).

In the filing of individual anti-dumping complaints, this logic is particularly striking. The most regular users and beneficiaries of the anti-dumping trade

policy instrument are trade associations from sectors with a relatively low number of firms or dominated by a set of very large firms. Their lower collective action costs facilitate the quasi-permanent delegation of preparing and filing anti-dumping cases to legal experts in product-specific or sector peak associations.⁴ Table 1 provides an overview of the number and average size of firms active in particular industries in the EU, i.e., it gives an idea of the level of consolidation and or not whether the industry is oligopolistic.

In the last three decades, most anti-dumping complaints have indeed come from heavy industry and manufacturing in raw materials, steel, chemicals and metal products (Davis 2009; De Bièvre 2003; Messerlin 1990; 2001).⁵ All these sectors score relatively high on the Hirschman–Herfindahl Index (HHI), and some of their sub-sectors consist of a very low number of firms, for instance in petrochemicals and steel fasteners. Well-established peak associations, like the European Chemical Industry Council (CEFIC), the European Confederation of Iron and Steel Industries (Eurofer), Eurometaux (the

Table 1 Degree of consolidation of selected EU manufacturing industries

Industry type	HHI
Non-ferrous metal*	0.1237
Steel**	0.1100
Shipbuilding and repairs*	0.1004
Leather products*	0.0851
Drugs and medicines	0.0839
Beverages*	0.0738
Rubber products*	0.0650
Glass products*	0.0544
Wearing apparel*	0.0245
Paper and pulp products*	0.0193
Chemical products*	0.0153
Textiles*	0.0148
Medical appliances*	0.0125
Wood products*	0.0079
Machinery and equipment*	0.0062
Food products*	0.0059
Publishing and printing*	0.0058

Notes: The index in the right column is based on the Hirschman–Herfindahl Index (HHI), which is a measure of the size of firms in relationship to the industry and an indicator of the amount of competition among them. It is defined as the sum of the squares of the market shares of each individual firm, thus ranging from many very small firms (HHI = close to 0) to one single monopolistic producer (HHI = 10,000). The higher the Hirschman–Herfindahl Index, the less companies are active in the sector.

Sources: *OECD 2004:9; **Commission of the European Communities (2008), based on 2004 enterprise data from the then 15 EU member states.

European Association of Metals), or the European Federation of Wire Rope Industries (EWRIS) act as the most prominent filers of anti-dumping on behalf of their members. Highly fragmented economic sectors composed of small- and medium-sized enterprises very rarely or never file for anti-dumping. The most active users of anti-dumping thus have well-established associations at their disposal, concentrated interests in anti-dumping policy and generally support prevailing anti-dumping legislation and practice.

The consolidation wave equally meant that some industries disappeared in one area and became geographically concentrated in others (for more information on consolidation and geographical concentration, see De Bièvre and Eckhardt [2010]). Midelfart-Knarvik *et al.* (2002) show how different important economic sectors – like chemicals, petroleum/coal and footwear – have become geographically concentrated in a small number of EU member states. As a consequence, industry support in favour of single anti-dumping complaints is concentrated geographically, with almost half the complaints receiving support from German companies, and about a third of complaints getting endorsements from only French, Italian and Spanish firms, based in countries with the most geographically concentrated sectors (Davis 2009; De Bièvre and Eckhardt 2010).

As EU member state principals' preferences on individual cases of anti-dumping decisions co-vary with the dominant preference within their own territory, geographical concentration has made some member states indifferent or even opposed to imposing anti-dumping duties on particular products for which they no longer have production facilities (Evenett and Vermulst 2005). The absence of industry support for the imposition of duties in individual anti-dumping cases in countries without production can thus account for a member state principal voting against the agents' proposal in an individual anti-dumping case. At the same time, geographical concentration of production is likely to have strengthened industry collective action in those regions or member states *with* domestic production (for a confirmation of this expectation applied to the US case, see Busch and Reinhardt [2000]). This does not mean, however, that interest groups and the government of such countries abandon their support for current EU anti-dumping policy and shift to a preference for a liberalizing reform of anti-dumping procedures. This is so because principals would still want to avail of the fire alarm oversight procedures, which ensure that interest groups can alert them about import-surges in product categories in which they do have local production.

Next to collective action advantages owing to consolidation, producers have a high certainty that they will be hurt by lost revenue and market share, in case legislative changes benefit economic sectors suffering from anti-dumping. Gains function as a less powerful incentive for political mobilization than the avoidance of losses (Dür 2010). The reason for this is an asymmetry in the availability and the salience of information, as societal interests are confronted with *uncertain* gains or *certain* losses. Negative effects of unfavourable policy decisions are usually easily identifiable, whereas the possible gains from a

favourable policy are more difficult to estimate, leading actors to mobilize differently (Hansen 1985). In anti-dumping, producers of steel fasteners, for instance, know that procedures making it more difficult to file an anti-dumping complaint will make them lose revenue as it becomes less likely that anti-dumping duties will protect them against foreign competitors. We expect this certainty of losses from a liberalizing reform, together with the collective action advantages for consolidated sectors, to trigger a considerable political mobilization on their part.

Consolidation, yet uncertainty about gains among importers and retailers

In recent years, economic sectors benefiting from the removal of barriers to trade – importers, retailers and consuming industries – have grown in size and become more consolidated. Next to their growth, the sectors of importers and especially retailers have come to be dominated by a small number of large enterprises, enhancing their capacity for collective action on their shared preference for fewer import restrictions. Consolidation took place both in food and non-food retailing (Dragun *et al.* 2004; Gereffi 1999). Compared with consolidation among producers, however, importers and retailers remain sectors composed of a relatively large number of players.

Nevertheless, consolidation clearly facilitated the establishment of umbrella organizations of importers and retailers at the EU level from the 1990s onwards. Among these Brussels-based organizations, branch specific associations (e.g., European Association of Fashion Retailers [AEDT], European Association of Furniture Retailers [FENA]), constitute the membership of organizations representing importers and retailers in all sectors (e.g., Eurocommerce, Foreign Trade Association, European Retail Round Table). These peak associations, some of which have overlapping membership, co-ordinate their activities and support their branch-specific member associations on individual anti-dumping cases. Since the ability to pressurise policy-makers depends to a large extent on whether the members of a group actually found a trade association (Hansen 1990; Hathaway 1998; Olson 1965), these sector- and branch-specific groups mobilized against individual anti-dumping cases as well as voiced their preference for a reform of prevailing EU anti-dumping practice.

At the same time, this pro-reform group was reinforced by European producers that had outsourced part of their production overseas. Increasing import-competition from foreign, especially Asian lower wage, manufacturers has led traditional European producers to lose market share and see production decline. This has prompted European industry to reduce mass production and concentrate on higher value-added products, as well as to outsource labour-intensive operations to low-cost countries, mainly in Asia (Eckhardt 2010; Eckhardt 2011, forthcoming; Nordås 2004). As a result, these producers turned into importers into the European market, increasingly experiencing anti-dumping duties as a burden rather than a blessing. This double development of

consolidation in the importers and retail sector, together with some producers turning into importers, leads one to expect a stronger coalition in favour of liberalizing anti-dumping legislation.

Despite their increased strength, those favouring reform were faced with uncertain future gains, i.e., the expectation of greater stability and reliability of their supply chains and increased revenues. Uncertain gains are a less powerful incentive for political mobilization than the certainty of losses facing producer groups pleased with the status quo. Therefore, the pro-reform group is expected to mobilize less strongly than producers frequently using anti-dumping.

THE REFORM PROCESS PROPER

The run-up to anti-dumping reform: controversial cases

The prevailing status quo of anti-dumping regulation came under considerable pressure when several trade defence instrument cases generated controversy among interest groups and EU member state principals over the last decade. One of those controversial cases has been the 'bed linen saga'; of the EU against India, Pakistan and Egypt. Between 1996 and 2002, Eurocoton (the Committee of the Cotton and Allied Textile Industries of the EU) filed several anti-dumping cases against imports of cotton-type bed linen from those countries. In all these cases, the Article 133 committee of the EU Council of Ministers approved of the Commission's proposal for definitive duties, but not without acrimony. The Eurocoton complaints had impelled a harsh political confrontation between traditional producers of bed linen in the south of the EU, backed by the southern member states with such domestic production, and importers supported by northern member states. In the case of duties against imports from India the committee recorded a tie vote (7–7), with Germany initially postponing and eventually casting the tie-breaking vote (Dutta 2006). Similar voting patterns emerged in cases against products from Pakistan and Egypt.

Controversy also erupted in cases of shoe, as well as apparel imports, from China. When, in accordance with the Uruguay Round agreements, the EU lifted its quotas on many shoe as well as textile and clothing imports from China at the beginning of 2005, China's share of imports rose dramatically. While importers saw big opportunities in imports of Chinese shoes and clothing, domestic EU import-competing producers felt threatened by these cheap imports, upon which European shoe producers filed an anti-dumping complaint against shoes from China, as well as from Vietnam. During the investigations on duties that followed, opponents and supporters again aligned along geographical, i.e., EU member state lines, with and without production facilities. Because the European Commission saw the diverging demands from interest groups reflected in member state positions in the anti-dumping committee, it ended up proposing a compromise: duties for two years instead

of five; duties of 16.5 per cent against shoes from China, instead of the normal 30 to 40 per cent; and no duties on so called special technology athletic footwear, grudgingly accepted by a small majority of member states (Eckhardt 2011, forthcoming).

Meanwhile, the 2005 quota phase-out on textiles imports from China unleashed an identical political battle, known as the 'bra wars' (Heron 2007). In this case EU producers demanded the introduction of safeguard measures (i.e., the re-introduction of quotas), confronting the Commission again with heavy political pressure from those in favour and those against such measures. In the end, the EU and China agreed to start talks on the issue in the course of 2005, which eventually led to the signing of a Memorandum of Understanding (MoU), in which they declared that the EU could impose safeguard measures on 10 products until 2007. However, it took the Commission more than a month to get the MoU implemented, during which European retailers placed big orders with Chinese exporters on top of the goods already ordered. Quotas for the entire year were full within no time and an additional 77 million items (mainly bras) from China were blocked at European borders, refuelling the debate between those in favour, and those against the use of trade defence instruments. The debate, which generated a lot of media coverage, ended in another compromise: half the amount of the blocked garments were counted towards the 2005 quotas, while the other half towards the 2006 quotas (Eckhardt 2010).

At the origin of the reform initiative by the European Commission agent, we therefore see three factors: first, a consolidation and geographical concentration of production leading to a decline of support in individual anti-dumping cases; second, a rise in the number of producers who had outsourced production; and third, a mobilization by importers, outsourcers and retailers in individual anti-dumping cases, through which they were able to signal their support for a broader revision of the mandate of the Directorate of Trade Defence. This changing balance of domestic interests lead the European Commissioner for Trade from 2004 to 2008, Peter Mandelson, to believe that time was ripe for a liberalizing reform of EU anti-dumping legislation.

The reform process: 2006–2008

In May 2006, the Trade Commissioner indicated that the Commission planned to conduct a public consultation regarding a possible reform of its anti-dumping policy,⁶ and on 11 July 2006 he invited several trade experts to present a reflection paper on EU trade defence instruments (for details on this expert-meeting, see De Bièvre and Eckhardt [2010]).⁷

By that time, the issue of a potential anti-dumping reform was already discussed within BusinessEurope because several of the members of this comprehensive peak association had raised their concerns about Mandelson's plans. Yet, two pragmatic compromise proposals co-ordinated within the organization's international relations department and committee failed to get enough

support. There was a clear split between the heavy manufacturing members and the downstream users of those products. Eight of the members – all producer groups and traditional users of anti-dumping (see Table 4) – decided to mobilize on their own and from early on in the policy process against any potential weakening of Europe’s trade defence instrument, and sent two letters of concern to the Commission in the second half of 2006.⁸ Their main concern was that a possible reform would make it more difficult for them to launch anti-dumping cases, which, in turn, would mean losses in revenue and market share. Importers and retailers, on the other hand, did not yet mobilize at this early stage.

In December 2006, the consultation process on a possible reform was officially launched as one of the initiatives within the Global Europe trade policy framework: a public consultation on the basis of the report *Europe’s Trade Defence Instruments in a Changing Global Economy. A Green Paper for Public Consultation* (Commission of the European Communities 2006).

The intent of the Commission’s consultation initiative became clear from the questions that were to guide the consultation: Do we take enough account of the producers who have relocated parts of their production outside the EU in the present system? Do we need to look at new ways of reflecting the interests of retailers as well as consumers when imposing anti-dumping duties? Could we be more transparent in the way we handle anti-dumping cases? Are we using the right criteria in launching investigations and in defining and implementing anti-dumping measures? And, finally, are we doing enough to ensure that the interests of small business are taken into account when imposing trade defence instruments (TDIs)?⁹ In other words, the consultation process was aimed at finding support for a reform of the anti-dumping policy that would give greater weight to the interests of importers and consumers at every stage of the anti-dumping procedure (see Table 2).

Table 2 Status quo of current antidumping Regulation and Commission reform considerations

Stages	Current antidumping regulation	Reform considerations
1. Standing requirement	Firms representing 25 per cent of Community production	Raise threshold to 40–50 per cent; include outsourcers
2. Advice	Council advisory committee	Contact third country governments
3. ‘Community interest’	Mainly test injury to producers	Injury test also for importers and consuming industries
4. Provisional duties	Short-notice	Advance notice
5. Council vote	Simple majority; abstentions as ‘yes’	Only ‘yes’ votes

Table 3 Timeline EU anti-dumping reform

2000–5		Controversy about bed linen cases, textile case and footwear case
2006	May	Commissioner Mandelson announces reform initiative
	July	Expert group, invitations to Directors and Sec.-Gen. Establishment of producer coalition of 8
	10 Oct.	European Commission Communication <i>Global Europe, Competing in the World, A Contribution to the EU's Growth and Jobs Strategy</i>
	Dec.	European Commission Green Paper <i>Global Europe, Europe's TDI in a changing global economy</i> Membership of producer coalition increases to 16
2007	13 March	Hearing: strong opposition from producers
	30 March	Deadline questionnaire
	April–May	– alleged informal case-by-case changes – no publication of results of questionnaire
	13 June	<i>Position on the follow-up to the Green Paper consultation on EU trade defence instruments</i> (CEFIC, Eurometaux, EUROFER, ACEA, ...)
	23 Oct.	Orientation debate at the College concerning the follow-up
	8 Nov.	Seminar 'Competitiveness in a Global Economy – A Challenge to Trade Discipline?' organised by 16 producer associations (Eurometaux and others)
	19 Nov.	Evaluation of the responses to the public consultation on Europe's TDIs in a changing global economy
2008	Jan.	Press release: Suspension of reform

As could be expected, importer and retail peak associations hailed the ideas put forward in the 2006 Green Paper, especially on issues such as the standing requirements and the Community interest test. Their branch-specific and firm members, however, remained relatively silent. On the anti-reform side, on the other hand, more and more producer groups started to realize that Mandelson was serious about this reform and that if his plans would be implemented, they would incur significant losses. Consequently, the original coalition of eight producer groups opposing the reform was now – on the initiative of Monique Jones, Director Trade and Competitiveness at Eurometaux and Chair of the Working Group on Trade Policy Instruments at BusinessEurope – expanded to include a membership of 16 regular users of current anti-dumping regulation (see Table 4). In another letter to Barroso,¹⁰ this coalition firmly opposed the 'DG Trade's project to install a burdensome administrative inquiry procedure to perform an assessment of the efficiency and the effects of trade defence measures.' This coalition of producer groups also started to alert EU member state representatives that they feared to incur losses in case the proposals would rebalance access to decision-makers on future individual anti-dumping

Table 4 TDI Coalition membership from July 2006 (with *) to mid-2007 (all)

<i>Abbreviation</i>	<i>Trade association full name and sector</i>
EUROMETAUX*	European Association of Non-ferrous Metal Industry
EUROCOTTON*	Committee of the Cotton and Allied Textile Industries of the EU
CEFIC*	European Chemical Industry Council
EUROFER*	European Confederation of Iron and Steel Industries
CIRFS*	International Rayon and Synthetic Fibre Committee
EFMA*	European Fertilizers Association
ESTA*	European Steel Tubes Association
EUROALLIAGE*	Association of European Ferro-alloy Producers
ECGA	European Carbon and Graphite Association
EUROMINES	European Association of Mining Industries
EWRS	European Federation of Wire Rope Industries
CEPI	Confederation of European Paper Industries
CEI-Bois	European Confederation of Woodworking Industries
CECED	European Association of Household Appliance Manufacturers
CERAME-UNIE	Liaison Office of the European Ceramic Industry
ACEA	Association of European Automobiles Manufacturers
ETUC	European Trade Unions Confederation

Source: http://www.euractiv.com/29/images/AlliTDIJuly07_tcm29-165590.pdf
(accessed January 2010).

cases in favour of outsourcing producers, retailers, importers and consuming industries.

After the adoption of the Green Paper, industry had three months to fill out a questionnaire for interested parties contained in the Green Paper publication. Shortly before that deadline, DG Trade held a public hearing on 13 March 2007, bringing together about 500 representatives from industry, the trading sector, member states, experts and parties interested in anti-dumping policy. At this event, participants could ask beforehand to be allocated speaking time and, owing to intensive co-ordination efforts on behalf of the producers, most of this time was taken up by representatives from producers reluctant or out-rightly hostile to changes in current anti-dumping policy.¹¹ The Commission officials were thus overwhelmed by demands from producers in the anti-reform coalition.

A similar pattern became apparent in the responses to the questionnaire. Of the 514 replies by firms and trade associations, only one-third were unique, as producer groups had mobilized their member firms to file exactly the same opinion as the view their representative organization had expressed in Brussels. The importer and retail sectors, on the other hand, had not been able to engage in this strategy of numbers, resulting in far fewer submissions on their behalf. Moreover, they had co-ordinated their responses to a lesser extent, resulting in mixed signals about their concrete preferences and desire for the reform

options we reviewed in the section above. Although the series of controversial cases had elicited the voicing of objections to current practice, importers and retailers had not beefed up their lobbying representation in Brussels. The European Consumers' Organization (BEUC), apart from responding to the Commission questionnaire, failed to formulate a position paper on the Commission's reform suggestions, and continued to concentrate on protest against individual anti-dumping decisions, in line with expectations from collective action theory that these diffuse interests have greater difficulties in mobilizing.¹² EuroCommerce, the peak association representing small as well as large commercial enterprises, has only two people working on trade issues, whereas every specialized producer group has permanent staff dealing with trade and especially anti-dumping, and sector peak associations like CEFIC or EUROFER have a team of people working on the topic.

Meanwhile, the Commission services were faced with the difficulty of drawing conclusions from the public consultation, which owing to the low attendance by the groups that had advocated a reform, had not resulted in backing for some of the reform options the Commission had put forward. On top of this, opposition to reform became even more manifest in the middle of 2007, as users of anti-dumping got the impression that the Commission services were informally changing the handling of pending anti-dumping cases to their disadvantage and to the benefit of outsourcers and importing interests. During the first five months of 2007, Commission services effectively and unusually did not open one single new case. In reaction, members of the anti-reform coalition (Table 4) extended their efforts to get the reform initiative off the table. They issued press releases¹³ and sent yet another letter to Barroso¹⁴ in which they complained that 'several concepts and methods suggested by the Green Paper, but clearly opposed by a vast majority of stakeholders in the public consultation, have apparently already been introduced in practice'. In addition, the anti-reform coalition actively lobbied the German Presidency to get the Commission to stop its legislative initiative (Tallberg 2010). According to one of our interview partners, together with members of this coalition, members of the Bundesverband der Deutschen Industrie (BDI) came over from Berlin to spend two weeks talking to Trade Commissioner Mandelson, Enterprise Commissioner Verheugen, European Commission President Barroso and member state representatives in the Council committee on trade matters. One of their strategies was to single out one reform consideration and warn that the introduction of a differentiation between foreign production facilities belonging to European firms versus non-EU firms would violate the non-discrimination rule of the World Trade Organization (WTO).¹⁵ As German support in the Council was widely considered as crucial on this matter, the reform initiative was effectively derailed and its advocates put in a minority position (Elsig 2010).

On 23 October 2007, the College of the European Commission held a so-called Orientation Debate on the proposed reform.¹⁶ In this document, Commission services had summarized the answers to the Green Paper questionnaire

and submitted a first draft of proposed changes to the basic regulation on anti-dumping and anti-subsidy. Areas of agreement included minor adaptations such as some vaguely worded suggestion about 'technical assistance' to small and medium enterprises, increasing transparency and involving trade unions. Wide disagreement remained, however, on the main purposes of the reform initiative, especially the broadening of the Community interest test to the interests of importers, consuming industries and retailers; including outsourcers as European industries; raising the 25 per cent standing requirement rule; and levels and duration of measures.

Shortly afterwards, the anti-reform coalition (Table 4) again outpaced the interest groups advocating reform by staging a widely attended seminar entitled 'Competitiveness in a Global Economy – A Challenge to Trade Discipline?' on 8 November 2007, at which they presented their analysis of the answers to the questionnaire, which DG Trade had still not performed and released officially. Since the results were publicly available on the Commission website at the time (but not now), the coalition of 16 European producer trade associations had hired a consultant to analyse all responses themselves, showing that a vast majority of those firms and interest groups that had responded to the questionnaire were against a reform.

As late as 19 November 2007, the European Commission finally released its own analysis of the results of the questionnaire. Not much later, on 11 January 2008, Commissioner Mandelson held a press conference at which he announced the shelving of the anti-dumping reform initiative.¹⁷ Faced with the effects of the professionally mounted lobbying campaign by producers, the Commissioner had failed in getting support from a qualified majority of member states for at least some of the reform proposals. Seeing that the major elements of the reform proposal kept eliciting strong opposition from producer groups and the member state principals with strong producer group presence, the European Commission agent decided to give in to the demands of those most intensively mobilized and abandon legislative change. When Commission President Barroso engaged in his strategy of keeping all contentious issues off the EU table in order to get the Lisbon Treaty ratified, even the minor and uncontroversial changes to the regulation were postponed.

CONCLUSION

In this study, we have analysed the causes for the failure of anti-dumping reform in the EU. Contrary to a set of expectations in the literature for a more open and liberal trade policy, we have shown that collective action advantages of concentrated import-competing producers together with the certainty of losses in case of reform enabled them to mobilize more than others. The latter pro-reform group consisting of importers and retailers, joined by producers having outsourced parts of their production, failed to mount a similar campaign in pursuit of merely uncertain future gains, while consumers and other civil society groups did not mobilize at all. Industry consolidation together with

the certainty of losses tipped the balance of power between actors for and against in favour of those opposed to a liberalizing reform. While geographical concentration resulting from consolidation led to declining member state support from areas without domestic production and thus increased controversy over individual anti-dumping cases, this evolution failed to provide a sufficient counterweight to the mobilization of producers. At the end of the reform process, there was no curtailment of the mandate of DG Trade's Directorate for Trade Defence to provide protection to concentrated sectors confronted with import surges.

We thus provide an account illustrating the enduring relevance of Olson's theory of collective action to explain interest group mobilization and their influence on policy outcomes in fields dominated by concentrated firm interests. The ability to overcome collective action problems not only determines whether firms manage the one-time establishment of a common trade association, but more importantly whether they are able to mobilize intensely and persistently over a longer period of time.

Furthermore, our explanation runs counter to a set of existing expectations on trade policy-making. First, trade policy-making by the European Union has not become more or less liberal than in the past, as anti-dumping will remain governed by the same rules. Rather, we shown public policy-makers confronted with diverging interest groups' demands to be most responsive to the demands of those most mobilized. Second, we show how concentrated interests alert and spur into action both the European Commission agent and EU member state principals when these interest groups expect concentrated losses from public policies – whether they be losses from the imposition of anti-dumping duties in individual cases or from proposed legislative changes. We thus differ from those principal–agent approaches that seek to assign a large degree of autonomy to the European Commission *vis-à-vis* interest groups, while ascribing more protectionist preferences to EU member states. We rather see public authorities at European Commission and EU member state level playing an equally important role in EU trade policy, as both have to act under diverging interest group pressures.

With regard to interest group research more generally, we show the usefulness of focusing on legislative acts that regulate and thus bias interest group access to public decision-makers. We also highlight how a non-decision has far-reaching consequences for day-to-day lobbying activity for years to come. The European Commission agent in charge of investigating individual industries' complaints will continue to privilege producer interests over the interests of other stakeholders, because the public interest test in anti-dumping policy remains procedurally limited to the interests of concentrated producers and their employees.

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NOTES

- 1 Trade defence instruments consist of anti-dumping measures, anti-subsidy or ‘countervailing duty’ policy and safeguards. The two latter instruments are rarely used, however, and understandably the political contentious reform centred on anti-dumping regulation.
- 2 Council Regulation (EC) no. 384/96 of 22 December 1995 on ‘protection against dumped imports from countries not members of the European Community’. The legal obligation to observe this minimum support to start anti-dumping investigations does not come cheaply as the EU’s trading partners and fellow World Trade Organization (WTO) members can enforce it by activating the WTO Dispute Settlement Body.
- 3 EU member states have reduced the decision threshold in the EU Council of Ministers to approve of Commission’s proposals to impose definitive duties twice: once

- from a qualified to a simple majority vote in 1994 (Woolcock 2000) and once again in 2004 from when onwards abstentions were to be counted as votes in favour.
- 4 Economists tend to ascribe the prominence of industries dealing with raw materials, steel, chemicals and the like in anti-dumping exclusively to 'declining comparative advantage', discounting the organizational variable of collective action advantages for consolidated sectors. It is hard to imagine, though, that you can be in decline for over 40 years and still be the leading producer as is the case for the European chemicals sector – an observation that makes it plausible that collective action and organizational characteristics play a key role in explaining the industries' predominance in anti-dumping complaints.
 - 5 For all anti-dumping cases initiated on behalf of European producers, see database created by Patrick Messerlin and updated by Dirk De Bièvre on EU anti-dumping petitions since 1980, available online at <http://www.ua.ac.be/dirk.debievre> (left column 'Documenten', then bottom of page; last accessed 2 April 2009).
 - 6 See the speech of Mandelson of 4 May 2006, available online at http://trade.ec.europa.eu/doclib/docs/2006/may/tradoc_128581.pdf (accessed 5 November 2009).
 - 7 All expert opinions are on file with the authors and available upon request.
 - 8 See the letter to Commissioner Mandelson of 28 July 2006, available online at http://www.euractiv.com/29/images/ADMand06_tcm29-160263.pdf (accessed 2 April 2009) and the second letter to Commission President Barroso of 29 November 2006, available online at http://www.euractiv.com/29/images/ADBar06_tcm29-160262.pdf (accessed 2 April 2009).
 - 9 The full speech of Commissioner Mandelson from 6 December 2006 is available online at http://ec.europa.eu/commission_barroso/ashton/speeches_articles/sppm135_en.htm (accessed 25 March 2009).
 - 10 A copy of the letter to Barroso (issued 13 June 2007) is on file with the authors.
 - 11 A transcript of the entire public hearing is on file with the authors and available upon request.
 - 12 See <http://www.beuc.eu/> (last accessed 2 April 2009) – see 'Policy issues A–Z'.
 - 13 See for example, http://www.euractiv.com/29/images/AlliTDIJuly07_tcm29-165590.pdf (accessed 14 January 2010).
 - 14 A copy of the letter to Barroso (issued, 29 May 2007) is on file with the authors.
 - 15 We thank Aubrey Silverston for clarifying this point to us.
 - 16 'Orientation Debate at the College concerning the follow-up to the Green Paper on Europe's trade defence instruments in a changing global economy', internal European Commission document on file with authors.
 - 17 See the online article on EurActiv, available at <http://www.euractiv.com/en/trade/member-state-divisions-delay-eu-trade-reforms/article-169527> and the press release from Reuters, available online at <http://in.reuters.com/article/businessNews/idINIndia-31359720080111> (accessed 2 April 2009).

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